

Court No. - 47

Case :- CRIMINAL REVISION No. - 1326 of 2024

Revisionist :- Maulana Tauqir Raza Khan

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Sheshadri Trivedi, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. This criminal revision has been filed by the accused revisionist praying for setting aside the impugned order dated 5.3.2024 passed by Additional Sessions Judge/ F.T.C.-I, Bareilly in Sessions Trial No. 759 of 2012 (State vs. Shahzade) arising out of Case Crime No. 519 of 2010, under sections 147, 148, 149, 307, 436, 332, 336, 427, 152, 153-A, 295, 397, 398 r/w 120-B IPC and Section 7 of Criminal Law Amendment Act and Section 3 of Prevention of Damage to Public Property Act, P.S. Prem Nagar, District Bareilly whereby he has been summoned as accused in exercise of power under section 319 Cr.P.C.

2. Heard Sri Satish Trivedi, learned senior counsel assisted by Sri Sheshadri Trivedi, learned counsel for the revisionist, Sri P.C. Srivastava, learned Additional Advocate General, Sri Ashutosh Sand, learned AGA assisted by Sri J.K. Upadhyay, learned counsel for the State and Sri Gaur Pratap Singh, brief holder for the State on prayer of revisionist for staying operation of the impugned order and non bailable warrant issued by the court below on 11.3.2024 against the revisionist.

3. Learned counsel for the revisionist submitted that revisionist is not named in the F.I.R. bearing Case Crime no. 519 of 2010. His name surfaced during investigation; matter relates to the year 2012. Learned trial court surprisingly summoned the present revisionist to face trial in exercise of suo motu power under section 319 Cr.P.C. after evidence of PW-13, Subhash Chandra Yadav, I.O.; accused revisionist was released on bail during investigation and a final report was submitted in his favour by the I.O. under section 169 Cr.P.C. The interim bail granted by learned Additional Sessions Judge was challenged by the informant before this Court by way of application under section 482 Cr.P.C. in which certain directions were issued but application u/s 482 Cr.P.C. is still pending and interim bail granted to the revisionist has not been cancelled as yet by the competent court. The revisionist was exonerated in police report dated 30.5.2010;

neither any protest petition was filed before the court below by the informant against the present revisionist nor any application under section 319 Cr.P.C. was filed by the public prosecutor or informant to summon the revisionist in exercise of power under section 319 Cr.P.C.

4. On the basis of contents of case diary and testimony of three prosecution witnesses cited in impugned order, learned trial court arrived at the conclusion that revisionist was Chairman of Ittehad-e-Millat Council (IMC) and was chief mastermind of the communal riots that took place in district Bareilly on 2.3.2010. He further submitted that learned trial court proceeded to give its personal views and personal experiences as well as clear exposition of its political affiliations and religious views and thus proceeded to summon the revisionist to face trial in exercise of suo motu power under section 319 Cr.P.C. Hon'ble Apex Court in Constitution Bench judgement in Hardeep Singh vs. State of Punjab, AIR 2014 SC 1400 held that evidence envisaged under section 319 Cr.P.C. is limited to the evidence of witnesses recorded during trial and court can exercise its power under the said provision even on the basis of statement made in examination in chief of the witnesses. The contents of the charge-sheet or case diary do not constitute evidence whereas in present case learned court below has placed reliance on evidence collected during investigation alongwith statement of witnesses before the court. Certain observations made by learned trial court manifest that learned Presiding Officer was driven by bias against the revisionist and he reserved the order and the order has not been passed in impartial and unprejudiced manner. It is required from a person holding a judicial office. Learned counsel cited section 479 Cr.P.C. which provides that no Judge or Magistrate shall, except with the permission of the Court, to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested inasmuch as learned Judge has cited the order passed by him in some other district and personal threats expressed by him and his family from certain quarters. He lastly submitted that learned Presiding officer is adamant to get the revisionist arrested by issuing non bailable warrant straight-away after issuing summons at first instance and he may suffer enormously if some interim protections are not granted to him.

5. Per contra, learned AGA and government law officer vehemently opposed the prayer for interim relief made by learned counsel for the revisionist and submitted that revisionist is mastermind of communal riots which took place on 2.3.2010 in district Barielly and there is sufficient evidence against him showing his complicity in the offence;

inspite of his presence in the city; he failed to appear before the court below on the date fixed which resulted in issuance of coercive process against him and same need not be stayed. The act of revisionist was of the nature of disturbing social fabric and public order. Learned trial court has rightly summoned him placing reliance of evidence of PW-3, PW-4 and PW-13.

6. Matter requires consideration.

7. Learned AGA is direction to file counter affidavit within two weeks. Rejoinder affidavit may be filed within two weeks thereafter.

8. List thereafter.

9. I have gone through the order under challenged whereby learned trial court while passing the impugned order mentioned certain unwarranted expressions containing political over-tones and personal views. Besides this, he has also shared his personal experiences in the said order, which is not at all required while passing passing judicial order. It is not expected from the judicial officer to express or depict his personal or pre conceived notions or inclinations in the matter. The judicial order is meant for public consumption and such type of order is likely to be misconstrued by the masses. It is expected from judicial officer that he should use a very guarded expression while focusing upon the issue in hand and should not use any observation which are tangent or alien to the core issue.

10. Bearing additional court, I am constrained to hereby expunge last para of page -6 to middle part of page-8 “यदि कोई धार्मिक ब्यक्ति सत्ता की सीट पर बैठता है कभी दंगा भडकाने वाले मास्टरमाइंड को सजा हुई” from the order itself and it should be construed as non est.

11. So far as nonailable warrant against the revisionist is concerned, I am not inclined to grant any indulgence to the revisionist at this stage. However, keeping in view the ensuing Holi vacations, the revisionist is directed to appear before the learned trial court on or before 27.3.2024 and apply for bail and his bail application shall be disposed off strictly in accordance with law. It need not be impressed that nonailable warrant shall not be executed against him by 27.3.2024 only with a view to give him an opportunity to appear before the court below.

Order Date :- 19.3.2024

Dhirendra/